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Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents

Working Group on the Development of the Convention

Fifth meeting
Geneva, 11–13 May 2015
Item 3 of the provisional agenda
Amendment to the Convention

Options for an amendment to the Convention on the Transboundary Effects of Industrial Accidents

Note by the secretariat

Summary

At its eighth meeting (Geneva, 3–5 December 2014) the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents requested the Working Group on the Development of the Convention to prepare a draft amendment to the Convention, for review and adoption at the ninth meeting of the Conference of the Parties.

The present note, prepared by the secretariat in cooperation with a legal expert, contains draft text for such an amendment. The document summarizes the Working Group's consideration of the Convention text for amendment and sets out the sources and rationale for the draft amended articles. The draft amended articles themselves are presented in an annex in a consolidated manner, with new text in bold and deleted text indicated by strikethrough.

The Working Group will be invited to discuss the draft amendment at its fifth meeting and to agree on options for amending the Convention.

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Introduction

1. The Working Group on Development of the Convention (Working Group on Development), as requested by the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) at its seventh meeting (Stockholm, 14–16 November 2012), evaluated possible amendments to the Convention, other than to annex I, in the biennium 2013–2014. This evaluation resulted in recommendations for both the amendment of certain articles of the Convention and the development of guidance by the Conference of the Parties, as laid out, along with the rationale, in an annex to the report of the fourth meeting of the Working Group (ECE/CP.TEIA/WG.1/2014/3, annex II).

2. Based on the Working Group's recommendations, the Bureau proposed a prioritization of provisions and issues for an amendment of the Convention and guidance by the Conference of the Parties (ECE/CP.TEIA/2014/9), specifying the time frame and responsible bodies to be tasked.

3. The Conference of the Parties at its eighth meeting (Geneva, 3–5 December 2014) agreed with the approach and recommendations set out in the two above-mentioned documents. On that basis, it requested the Working Group to prepare a draft amendment on articles 1 (definitions), 9 (information to, and participation of the public), 18 (Conference of the Parties), paragraph 1, and 29 (ratification, acceptance, approval and accession), considering also related provisions of and annexes to the Convention, for adoption at the ninth meeting of the Conference of the Parties. The Working Group was also requested to prepare draft text to open the Convention to accession by Member States of the United Nations beyond the United Nations Economic Commission for Europe (ECE) region, as part of the amendment.

4. The present document, prepared by the secretariat in cooperation with a legal expert, provides a summary of the Working Group's previous consideration of the various provisions for amendment and explains why the draft text was formulated as presented herein. Draft text for the changes to be incorporated in the amendment is consolidated in the annex.

I. Article 1

A. Consideration by the Working Group

5. At its third (Geneva, 3–4 September 2013) and fourth (Geneva, 28–29 April 2014) meetings, the Working Group on Development discussed the need for revised and additional definitions for article 1 of the Convention, considering that:

(a) An amendment of the current definition of the "public" (art. 1, para. (j)) could ensure alignment with the definition of the public in the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and that of other ECE multilateral environmental agreements (MEAs) which adopted the definition in the Aarhus Convention;

(b) A further clarification of the definition of "effects" (art. 1, para. (c)) could also be considered, as the definition was outdated and did not reflect the current state of the art, in order to adapt it to current technical progress;

(c) There was a confusion, evident in the national implementation reports of several Parties, between the notification requirement set out in in article 4, paragraph 1, regarding hazardous activities and the notification requirement set out in article 10, paragraph 2, concerning industrial accidents.

6. On this basis, the Conference of the Parties at its eighth meeting mandated the Working Group to amend article 1 of the Convention to align it with other ECE Conventions (i.e., the Aarhus Convention and the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)), to adjust the definitions in accordance with internationally accepted developments, to improve its clarity and legal certainty and to enhance internal consistency within the Convention.

B. Sources and rationale for the draft text

7. The revision of the definition of the "public" in article 1, paragraph (j), aims at aligning the Industrial Accidents Convention with the definition used by other ECE MEAs, including the Aarhus and Espoo Conventions, which can be regarded as "state of the art". It also improves consistency with the relevant legislation of the European Union (EU), including the Seveso III Directive.[1]

8. The current definition of "effects" in article 1, paragraph (c), is based on the wording of article 3 of the EU Environmental Impact Assessment (EIA) Directive in its original version from 1985.[2] The respective wording of the EIA Directive describes the scope of assessment and has been subsequently slightly changed since 1985, inter alia, to align this definition with the definition of "environmental information" in the Aarhus Convention, which refers to "biological diversity and its components" instead of "fauna and flora".

9. The Working Group might also wish to consider adding two suggested additional definitions to article 1 —"notification of hazardous activities" and "notification of an industrial accident" — to improve clarity and legal certainty on the Convention's notification provisions.

II. Article 9

A. Consideration by the Working Group

10. The Working Group on Development at its third and fourth meetings discussed the need and possibilities for strengthening the Convention's public participation provisions. It agreed that article 9 of the Convention should be amended in order to achieve consistency with other relevant legal instruments, in particular the Aarhus Convention, as well as the EU Seveso III Directive. Furthermore, amending the Convention to strengthen its public participation provisions could contribute to better participatory democracy and access to justice in the pan-European region. The Working Group considered that these goals could be achieved by referring separately to the three pillars of the Aarhus Convention — access to information; public participation; and access to justice.

[1] Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC.

[2] Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

11. The Conference of the Parties at its eighth meeting mandated the Working Group to amend article 9 of the Convention to strengthen the provisions on public participation.

B. Sources and rationale for the draft text

12. The current text of article 9 addresses the issues of access to information, public participation and access to justice in relation to matters covered by the Convention, complemented with provisions in the annexes addressing some elements of access to information and public participation. The current legal scheme provided by the Convention in this respect is rather general and the terminology is not always consistent, in particular between the provisions of the Convention and its annexes. Furthermore, the provisions of the Convention do not reflect the state of the art in relation to the access to information, public participation and access to justice in environmental matters, which is generally set by the Aarhus Convention, while in matters related to industrial accidents and involvement of the public it is set by the Seveso III Directive. As most of the Parties to the Convention are also Parties to the Aarhus Convention, the existence of different legal schemes that are not correlated causes a lack of legal certainty and problems in practice.

13. In order to address these issues and to strengthen public participation in the Convention, draft text has been proposed setting out the access to information, public participation and access to justice provisions in separate articles. The purpose of the amendment is to translate the general provisions of the Aarhus Convention into specific provisions for the Industrial Accidents Convention to clarify the role and involvement of the public and the authorities with regard to these three pillars, in particular public participation in emergency preparedness and land-use planning. To achieve this, the proposed text aligns the Industrial Accidents Convention with the respective provisions of the Aarhus Convention and the Seveso III Directive, by harmonizing them while at the same time maintaining or enhancing the conceptual and terminological integrity and internal coherence. In general, the proposals for draft text are based on the corresponding provision of the Seveso III Directive, which implements the general provisions of the Aarhus Convention in the domain of industrial accidents. However, if a provision of the Directive uses a term or wording specific to the Directive or which refers directly to another piece of EU legislation, the text proposed introduces a term used by the Industrial Accidents or Aarhus Conventions.

1. Information to the public (article 9)

14. The amendment proposed to article 9 (information to the public) specifies the modalities for the provision of information to the public in the area capable of being affected by an industrial accident, among others, by introducing the requirement to make the information available electronically and by specifically mentioning buildings and areas of public use to which information needs to be distributed. In order to introduce these specifications, article 9 has been aligned with the provisions of other legal instruments, as follows:

(a) Paragraph 1 is based on the existing text with changes to follow the provisions of article 14, paragraph 1, of the Seveso III Directive. The precise wording is modified to provide consistency with other provisions of the Convention;

(b) Paragraph 2 is based on the provisions of article 14, paragraph 2, of the Seveso III Directive, in particular those relating to subparagraph 2 (a). The precise wording is modified to provide consistency with other provisions of the Convention;

(c) Paragraph 3 is based on the obligation in article 5, paragraph 1 (c), of the Aarhus Convention and articles 17 (e) and 18, paragraph 1 (c), of the Seveso III Directive.

It corresponds with the obligations already included in annex VII, paragraph 5 (f), and annex VIII, paragraphs 6 and 7, of the Convention;

(d) Paragraph 4 is based on the existing obligation in article 9, paragraph 1, of the Convention;

(e) Paragraph 5 is based on article 14, paragraph 2 (b) and (c), of the Seveso III Directive, with modifications to make it consistent with the Industrial Accidents Convention. The legal meaning of this provision is that — as opposed to the obligations related to certain types of information under paragraphs 1, 2 and 3 of article 9 — all the other relevant information must be available only upon request and apply all the limitations regarding access to information (commercial and industrial secrecy, etc.) indicated in article 22 of the Convention.

2. Public participation (article 9 bis)

15. It is proposed to introduce article 9 bis (public participation) to clarify how the public can participate in activities on the prevention of and preparedness for industrial accidents, particularly with regard to land-use planning and emergency preparedness. It also specifies the modalities for the provision of information to the public in the decision-making process for the siting of hazardous activities in order to provide the public with early and effective opportunities to participate. The new article 9 bis is based on the provisions of other legal instruments, as follows:

(a) Paragraph 1 is based on article 15, paragraphs 1 and 6, of the Seveso III Directive, but modified to refer to the relevant provisions of the Industrial Accidents Convention and to avoid reference to specific pieces of EU legislation. The text regarding non-governmental organizations is based on article 2, paragraph 5, of the Aarhus Convention, but modified to adjust to the Industrial Accidents Convention, which uses the term "the public in the areas capable of being affected" instead of "the public concerned". In addition, the text combines the procedures for individual decisions and for plans and programmes — as opposed to the Seveso III Directive — given that under the EU legislation both procedures are regulated almost identically;

(b) Paragraph 2 is based on article 15, paragraph 2, of the Seveso III Directive, but modified by using the wording from article 6, paragraph 2, of the Aarhus Convention and also to refer to the relevant provisions of the Industrial Accidents Convention with reference to consultations under article 4;

(c) Paragraph 3 is based on article 15, paragraph 3, of the Seveso III Directive, but modified to avoid reference to other pieces of EU legislation by using the wording from article 6, paragraph 6 (f), of the Aarhus Convention;

(d) Paragraph 4 is based on article 15, paragraph 4, of the Seveso III Directive, which itself is based on the relevant provisions of the Aarhus Convention;

(e) Paragraph 5 is based on article 15, paragraph 5, of the Seveso III Directive, which itself is based on article 6, paragraphs 7 and 8, of the Aarhus Convention;

(f) Paragraph 6 is mostly based on article 15, paragraph 7, of the Seveso III Directive, which itself is based on article 6, paragraph 3, of the Aarhus Convention. It is supplemented with the obligation to provide equivalent opportunities to the public of the affected Party which is already included in the existing text of article 9, paragraph 2, of the Industrial Accidents Convention.

3. Access to justice (article 9 ter)

16. It is further proposed to introduce an article 9 ter (access to justice) to strengthen the provisions on access to justice in the Convention, as currently provided for under existing article 9, paragraph 3. Draft article 9 ter is based on the provisions of other legal instruments, as follows:

(a) Paragraph 1 is based on article 9, paragraphs 1 and 3, of the Aarhus Convention and on article 23, subparagraph (a), of the Seveso III Directive, but modified to refer to the relevant provisions of the Industrial Accidents Convention and to avoid reference to specific pieces of EU legislation. The text refers not only to access to information upon request — as in the Seveso III Directive — but also provides, in line with article 9, paragraph 3, of the Aarhus Convention, the possibility to challenge omissions related to the obligations under proposed article 9 ter regarding the active disclosure of information;

(b) Paragraph 2 is based on article 9, paragraph 2, of the Aarhus Convention and on article 23, subparagraph (b), of the Seveso III Directive, but modified to refer to the relevant provisions of the Industrial Accidents Convention and to avoid reference to specific pieces of EU legislation. The text refers not only to challenging the individual decisions — as in the Seveso III Directive — but also provides, in line with article 9, paragraph 3, of the Aarhus Convention, the possibility to challenge acts and omissions related to obligations under article 9 bis regarding general plans and programmes;

(c) Paragraph 3 is almost identical to the existing text of article 9, paragraph 3, but modified to make it consistent with other proposed amendments, in particular regarding non-governmental organizations.

III. Article 18, paragraph 1

A. Consideration by the Working Group

17. At its third and fourth meetings, the Working Group on Development discussed whether there was a need to clarify the frequency of meetings as set out in article 18, paragraph 1, of the Convention, which required annual meetings, despite the current practice of the Conference of the Parties meeting only every two years. The Working Group agreed to recommend to the Conference of the Parties to amend the text of article 18 accordingly. At its eighth meeting the Conference of the Parties mandated the Working Group to amend article 18 to ensure that the current practice of meeting every two years complies with the Convention.

B. Rationale for the draft text

18. The draft text amending article 18, paragraph 1, will bring the text of the Convention into line with the current practice of the Conference of the Parties, which meets every two years.

IV. Article 29

A. Consideration by the Working Group

19. At its third and fourth meetings, the Working Group discussed whether there was a need to amend article 29 of the Convention to clarify the application of amendments to new Parties, and agreed that such an amendment was needed. On that basis, the Conference of the Parties mandated the Working Group on Development to prepare draft text to amend the Convention to ensure that when new Parties ratified, acceded to or approved the Convention, they automatically ratified, acceded to or approved amendments to the Convention.

B. Sources and rationale for the draft text

20. The proposed changes to the existing text of article 29 (adding a new paragraph 5) will ensure that new Parties automatically ratify, accede to or approve amendments to the Convention when they ratify, accede to or approve the Convention, even if the amendments have not yet entered into force. The draft text also reflects Parties' interest in keeping the possibility of making reservations, expressed at the fourth meeting of the Working Group on Development. Subparagraphs 5 (a) and (b) are proposed in order to provide Parties with different possibilities regarding possible reservations, in line with article 40, paragraph 5, of the Vienna Convention on the Law of the Treaties which also provides for two options: (a) the option of expressing the intention not to be bound by the Convention as amended, upon entry into force of the amendments; and (b) the option of expressing the intention not to be bound by amendments adopted but not yet in force. In this regard, the draft text will introduce clarity and ensure legal certainty for new Parties regarding the amendments to the Convention.

V. Opening the Convention for accession by States outside the region

A. Consideration by the Working Group

21. As requested by the Conference of the Parties at its seventh meeting, the Working Group on Development discussed in the biennium 2013–2014 the issue of opening the Convention for accession by Member States of the United Nations from beyond the region. At its fourth meeting, the Working Group agreed that, due to the strategic nature of the topic, a thorough discussion should take place at the eighth meeting of the Conference of the Parties.

22. The Conference of the Parties at its eighth meeting discussed the topic and requested the Working Group to prepare draft text with regard to the opening of the Convention. It also requested the Working Group to continue thoroughly considering all aspects related to the opening of the Convention in terms of potential benefits and challenges, including possible budgetary implications, and to present the outcome of its considerations to the Conference of the Parties at its ninth meeting.

B. Sources and rationale for the draft text

23. The draft text opening the Convention for accession by Member States of the United Nations beyond the ECE region is based on similar approaches by other ECE MEAs. It is specifically based on text of the Aarhus Convention (article 19, paragraph 3) without requiring stipulating that the accession be on "approval by the Meeting of the Parties". It is proposed not to introduce such a condition, taking into account the experiences and lessons learned by other ECE MEAs, especially the Espoo Convention and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), which both included such a condition in similar amendments opening those Conventions (in 2001 and 2003, respectively). The Meetings of the Parties to the Espoo and Water Conventions later considered the condition to be discriminatory, since it did not exist for new members from within the ECE region, and have since introduced decisions to provide a blanket approval for any future such requests (in 2014 and 2012, respectively).[3]

24. Furthermore, the amendments to open the Espoo and Water Conventions introduced a requirement for all Parties that were Parties at the time of the adoption of the amendment to subsequently ratify it so that it could become operational. This requirement has had the effect of delaying the accession by interested member States and rendering the entire process lengthier. In practice it has meant that, although the amendment to the Water Convention has been in force since 2013, accession by non-ECE States is still not possible as several Parties to the Water Convention that were Parties in 2003 have yet to ratify the amendment. Similarly, the Espoo amendment also lacks several ratifications to enter into force.

25. The wording proposed for the Industrial Accidents Convention avoids both making the approval by Parties a condition for accession by non-ECE countries and introducing a condition that the amendment must be ratified by all Parties adopting it. The proposed text is based on the assumption that the introduction of such an amendment is only worth undertaking if the possibility for States beyond the ECE region to accede is unconditional and formulated in the same way as for countries within the region.

VI. Proposals for amendments in related provisions and annexes

26. In tasking the Working Group to draft an amendment to specific provisions and articles of the Convention, the Conference of the Parties requested the Working Group to consider also related provisions of and annexes to the Convention, which might need to be aligned with these changes or otherwise updated. The Working Group has elaborated a number of proposed changes in this regard, concerning the preamble and article 8 of the Convention and also annexes V and VIII. The rationale for the proposed changes is set out below.

[3] For more information, see decision VI/3 of the Meeting of the Parties of the Water Convention (ECE/MP.WAT/37/Add.2, decision VI/3, para. 4) and decision VI/5 of the Meeting of the Parties of the Espoo Convention (ECE/MP.EIA/20/Add.3–ECE/MP.EIA/SEA/4/Add.3, decision VI/5–II/5, paras. 3 and 5).

Sources and rationale for the draft text

1. Preamble

27. It is proposed to amend the sixth preambular paragraph in order to align the preamble with developments in international law concerning related issues, and thus to acknowledge other ECE legal instruments of special relevance to the Convention.

2. Article 8

28. It is proposed to insert a sentence in article 8, paragraph 2, to align the provision with EU legislation, which requires the involvement of the personnel working on-site in the preparation of the on-site contingency plans. The proposed amendment is based on the language employed in in article 12, paragraph 4, of the Seveso III Directive.

29. It is also proposed to insert language in paragraph 3 to provide for opportunities for the public to participate, as their participation in the preparation of plans "relating to the environment" is required by article 7 of the Aarhus Convention. In line with this obligation, public participation in the preparation of the external emergency plans is also required by article 12, paragraph 5, of the Seveso III Directive. The wording of the proposed amendment is also consistent with the proposed addition of an article 9 bis on public participation.

3. Annex V

30. It is proposed to amend language in annex V, paragraph 2, to ensure a consistent use of terminology throughout the entire Convention. The current wording of annex V is not consistent with either the wording in article 1, paragraph (c), which uses the term "human being" instead of "people", or with the usage of the term "human being" in other provisions of the Convention, for example in article 3 paragraph 1. In addition, the Convention consistently uses the term "environment" and not the term "non-human environment".

31. In addition, the current wording of annex V, paragraph 2, is not consistent with the wording in article 1, paragraph (c), of the Convention, which defines the term "effects" so that it already covers the concepts of "people" (human beings) and "environment" (fauna, flora, etc.). Thus mentioning these concepts additionally in the context of the term "effects" is a duplication which should be avoided. In addition, the current wording is not consistent with the wording in the rest of the Convention, which uses the term "public" (as defined in article 1) instead of "people".

4. Annex VIII

32. It is proposed to amend annex VIII, paragraph 5, to ensure a consistent use of terminology throughout the entire Convention. The current wording of the provision is not consistent with the wording in article 1, paragraph (c), of the Convention, which defines the term "effects" in a way that already covers the concepts of "population" (human beings) and "environment" (fauna, flora, etc.). Mentioning these concepts additionally in the context of the term "effects" is a duplication which should be avoided. In addition, it is proposed in changing this wording to use language employed in annex V, Part 2, paragraph 1, of the Seveso III Directive.

33. It is also proposed to amend annex VIII, paragraphs 6, 7 and 9, to ensure a consistent use of terminology throughout the Convention (article 9 uses the term "the public in the areas capable of being affected"), as well as to align the language with the Seveso III Directive, which includes similar wording in its annex V, Part 2, paragraph 3.

Annex

Proposed amendment to the Convention on the Transboundary Effects of Industrial Accidents

A. Article 1

1. In article 1, paragraph (c) (i), replace "flora and fauna" with "biological diversity and its components", to read as follows:

(c) "Effects" means any direct or indirect, immediate or delayed adverse consequences caused by an industrial accident on, inter alia:

(i) Human beings, ~~flora and fauna~~ **biological diversity and its components**;

2. In paragraph (j) after "persons", insert: "and, in accordance with national legislation or practice, their associations, organizations or groups", to read as follows:

(j) "The public" means one or more natural or legal persons **and, in accordance with national legislation or practice, their associations, organizations or groups**;

3. After paragraph (j), insert:

(k) "Notification of hazardous activities", according to article 4 of the Convention, means the formal procedure of sharing with an affected Party information about hazardous activities, so that the affected Party can put in place adequate preventive and preparedness measures;

(l) "Notification of an industrial accident", according to article 10 of the Convention, means the formal procedure of informing an affected Party, without delay, about an industrial accident with transboundary consequences that occurred in the area of the Party of origin, so that the affected Party can take adequate response measures.]

B. Article 9

4. Replace article 9 by the following text:

Article 9
Information to the public

1. The Parties shall ensure that the information referred to in annex VIII hereto is permanently available to the public, including in electronic databases which are easily accessible to the public through public telecommunications networks. The information shall be periodically reviewed and, where necessary, updated, including in the event of modifications referred to in annex V, paragraph 2, subparagraph (16).

2. Parties concerned shall ensure that the public in the areas capable of being affected by an industrial accident arising out of a hazardous activity receive regularly, and in the most appropriate form, without having to request it, clear and intelligible information on safety measures and the requisite behaviour in the event of a major accident, in particular the information referred to in annex VIII hereto. This information shall be transmitted through

such channels as the Parties concerned deem appropriate, and supplied to all buildings and areas of public use, including schools and hospitals, and all neighbouring establishments where the risk or consequences of an industrial accident may be increased because of the geographical position and the proximity of such establishments. The Parties concerned shall ensure that the information is supplied at least every five years, and is periodically reviewed and, where necessary, updated, including in the event of modifications referred to in annex V, paragraph 2, subparagraph (16).

3. In the event of an industrial accident or imminent threat thereof, the Parties concerned shall ensure that all information that is held by them that could enable the public to take measures to prevent or mitigate harm arising from the threat is disseminated immediately and without delay to the public in the areas capable of being affected, in accordance with annex VII, paragraph 5 (f), and annex VIII, paragraphs 6 and 7, of the Convention. This information shall include at least a brief description of the circumstances of the industrial accident, including its location, the hazardous substances involved (if known) and its immediate effects.

4. For the purposes of the obligations under paragraphs 1, 2 and 3, the Parties should take into account matters set out in annex V, paragraph 2, subparagraphs (1) to (4) and (9).

5. Information regarding the preparedness measures and other relevant information, other than information referred to in paragraphs 1, 2 and 3, shall be made available to the public upon request subject to article 22.

Article 9 bis
Public participation

1. The Parties shall ensure that the public is given early and effective opportunities to participate in the relevant decision-making procedures regarding the siting of hazardous activities referred to in article 7 and off-site contingency plans referred to in article 8. The Parties shall identify the public entitled to participate, including the public in the areas capable of being affected and relevant non-governmental organizations meeting any relevant requirements imposed under national law, such as those promoting environmental protection, taking into account matters set out in annex V, paragraph 2, subparagraphs (1) to (9).

2. The public shall be informed by public notices or other appropriate means, including electronic media where available, and in an adequate, timely and effective manner, of the following matters early in the decision-making procedure or, at the latest, as soon as the information can reasonably be provided:

(a) The subject matter of the respective decision-making procedure and, where applicable, the fact that it is subject to procedures pursuant article 4 and/or any other transboundary procedure or national environmental assessment procedure;

(b) Details of the competent authority responsible for the respective decision-making, from which relevant information can be obtained and to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;

(c) The nature of possible decision or, where there is one, the draft decision or plan;

(d) An indication of the times and places where, or means by which, the relevant information will be made available;

(e) Details of the arrangements for public participation and consultation made pursuant to paragraph 6 of this article.

3. In addition to making available the information referred to in article 9 paragraphs 1 and 2, the Parties shall ensure that the public is provided with access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 22.

4. The Parties shall ensure that the public is entitled to express, in writing or, as appropriate, at a public hearing, any comments and opinions, including views and concerns on prevention and preparedness measures, to the competent authority before a respective decision is taken, and that the outcome of public participation held pursuant to this article is duly taken into account in the taking of a decision.

5. The Parties shall ensure that when the respective decisions are taken, the competent authority shall make available to the public:

(a) The content of the decision or the plan, and the reasons and considerations on which it is based, including any subsequent updates;

(b) The results of the public participation held before the decision was taken and an explanation of how they were taken into account in that decision.

6. The Parties shall determine detailed arrangements for informing and consulting the public. Reasonable time frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public to prepare and participate effectively in the decision-making subject to the provisions of this article. The Parties shall ensure that the opportunities given to the public of the affected Party are equivalent to that given to the public of the Party of origin.

Article 9 ter
Access to justice

1. The Parties shall, within the framework of their national legislation, ensure that any person seeking information pursuant to article 9 has access to review procedures before a court of law or another independent and impartial body established by law to challenge acts or omissions of authorities responsible for making the information available.

2. The Parties shall, within the framework of their national legislation, ensure that members of the public:

(a) Having a sufficient interest; or

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition;

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the

substantive and procedural legality of any decision, act or omission, subject to the provisions of article 9 bis. What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public wide access to justice. To this end, the interest of any non-governmental organization meeting any relevant requirements imposed under national law shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

3. The Parties shall, in accordance with their legal systems and, if desired, on a reciprocal basis, provide non-governmental organizations and natural or legal persons that are being or are capable of being adversely affected by the transboundary effects of an industrial accident in the territory of a Party with access to justice, and treatment in the relevant administrative and judicial proceedings, including the possibilities of starting a legal action and appealing a decision affecting their rights, equivalent to those available to non-governmental organizations and persons within their own jurisdiction.

C. Article 18, paragraph 1

5. In paragraph 1 replace "a year" with "every two years", to read as follows:

1. The representatives of the Parties shall constitute the Conference of the Parties of this Convention and hold their meetings on a regular basis. The first meeting of the Conference of the Parties shall be convened not later than one year after the date of the entry into force of this Convention. Thereafter, a meeting of the Conference of the Parties shall be held at least once ~~a year~~ **every two years** or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat, it is supported by at least one third of the Parties.

D. Article 29

6. Insert at the end of article 29 a new paragraph reading:

5. Any State or organization referred to in article 27 that ratifies, accepts or approves this Convention, failing an expression of a different intention by that State or organization, shall be considered:

(a) A Party to the Convention as amended by any amendment that has entered into force; and

(b) To have ratified, accepted or approved any amendment to the Convention that has been adopted but has not yet entered into force.

7. After paragraph 2, insert a new paragraph reading:

2 bis. Any other State not referred to in paragraph 2 above that is a Member of the United Nations may accede to the Convention.

F. Related articles and annexes

1. Preamble

8. At the end of the sixth preambular paragraph add "and its Protocol on Strategic Environmental Assessment, as well as the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters" to read as follows:

> *Conscious* of the role played in this respect by the United Nations Economic Commission for Europe (ECE) and recalling, inter alia, the ECE Code of Conduct on Accidental Pollution of Transboundary Inland Waters and the Convention on Environmental Impact Assessment in a Transboundary Context, **and its Protocol on Strategic Environmental Assessment, as well as the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**.

2. Article 8

9. In paragraph 2 insert after the first sentence the text: "The plans shall be drawn up in consultation with the personnel working on-site, including long-term relevant subcontracted personnel.", to read as follows:

> 2. The Party of origin shall ensure for hazardous activities the preparation and implementation of on-site contingency plans, including suitable measures for response and other measures to prevent and minimize transboundary effects. **The plans shall be drawn up in consultation with the personnel working on-site, including long-term relevant subcontracted personnel.** The Party of origin shall provide to the other Parties concerned the elements it has for the elaboration of contingency plans.

10. In paragraph 3 insert in the second sentence after these "plans," the following words: "opportunities for the public shall be provided in accordance with article 9 bis and", to read as follows:

> 3. Each Party shall ensure for hazardous activities the preparation and implementation of off-site contingency plans covering measures to be taken within its territory to prevent and minimize transboundary effects. In preparing these plans, **opportunities for the public shall be provided in accordance with article 9 bis and** account shall be taken of the conclusions of analysis and evaluation, in particular the matters set out in annex V, paragraph 2, subparagraphs (1) to (5). Parties concerned shall endeavour to make such plans compatible. Where appropriate, joint off-site contingency plans shall be drawn up in order to facilitate the adoption of adequate response measures.

3. Annex V

11. In subparagraph (3) (b), replace the word "people" with "human beings" and delete "non-human".

12. In subparagraph (6), replace the word "people" with "human beings".

13. In subparagraph (7), delete "on people and the environment".

14. In subparagraph (9), replace "people" with "public".

15. With regard to the above changes, annex V, paragraph 2, subparagraphs (1) to (9) would read as follows:

2. The following table illustrates, for the purposes of the related Articles, matters which should be considered in the analysis and evaluation, for the purposes listed:

Purpose of analysis	*Matters to be considered*
Emergency planning under Article 8	(1) The quantities and properties of hazardous substances on the site. (2) Brief descriptive scenarios of a representative sample of industrial accidents possibly arising from the hazardous activity, including an indication of the likelihood of each. (3) For each scenario: (a) The approximate quantity of a release; (b) The extent and severity of the resulting consequences both for ~~people~~ **human beings** and for the ~~non-human~~ **environment** in favourable and unfavourable conditions, including the extent of resulting hazard zones; (c) The time-scale within which the industrial accident could develop from the initiating event; (d) Any action which could be taken to minimize the likelihood of escalation. (4) The size and distribution of the population in the vicinity, including any large concentrations of people potentially in the hazard zones. (5) The age, mobility and susceptibility of that population.
Decision-making on siting under Article 7	In addition to items (1) to (5) above: (6) The severity of the harm inflicted on ~~people~~ **human beings** and the environment, depending on the nature and circumstances of the release. (7) The distance from the location of the hazardous activity at which harmful effects ~~on people and the environment~~ may reasonably occur in the event of an industrial accident. (8) The same information not only for the present situation but also for planned or reasonably foreseeable future developments.
Information to the public under Article 9	In addition to items (1) to (4) above: (9) The ~~people~~ **public** who may be affected by an industrial accident.

4. Annex VIII

16. In paragraph 5, delete "on the population and the environment" and insert at the end of the paragraph "and control measures to address the industrial accident".

17. In paragraph 6, replace the words "affected population" with "public in the areas capable of being affected".

18. In paragraph 7, replace the words "affected population" with "public in the areas capable of being affected".

19. At the end of paragraph 9, delete ":" and insert ". This should include advice to cooperate with any instructions or requests from the emergency services at the time of an accident".

20. With regard to the above changes, the above paragraphs in annex VIII would read as follows:

> 5. The general information relating to the nature of an industrial accident that could possibly occur in the hazardous activity, including its potential effects ~~on the population and the environment~~ **and control measures to address the industrial accident**.
>
> 6. Adequate information on how the ~~affected population~~ **public in the areas capable of being affected** will be warned and kept informed in the event of an industrial accident.
>
> 7. Adequate information on the actions the ~~affected population~~ **public in the areas capable of being affected** should take and on the behaviour they should adopt in the event of an industrial accident.
>
> ...
>
> 9. General information on the emergency services' off-site contingency plan, drawn up to cope with any off-site effects, including the transboundary effects of an industrial accident **This should include advice to cooperate with any instructions or requests from the emergency services at the time of an accident.**